SPECIAL SESSION ADDRESS
ON NONMEANDERED WATERS
GOVERNOR DENNIS DAUGAARD
THE STATE CAPITOL – PIERRE, SOUTH DAKOTA – JUNE 12, 2017

Welcome back to the capital city.

Under our Constitution, South Dakota has a short 40-day legislative session. To those who serve and to our constituents, our short session is a source of pride. Our state legislators are not career politicians. You take time away from your jobs and your families to come to Pierre for nine weeks in the winter. While you are here, you work hard and make important decisions on behalf of your constituents and our state. In March, when the work is complete, you go home and live among the people you serve.

In most years, we are able to complete our business in those 40 days – and impressively so. You are an efficient body. But, from time to time, an issue arises which necessitates the call for a special session.

This is South Dakota's 26th special session, and good work accomplished in these chambers by our predecessors during those Special Sessions. Special sessions were called to provide for women's suffrage by ratifying the 19th amendment, to allow soldiers fighting in WWII to vote in the 1944 election, to construct the Fighting Stallions Memorial, and to appropriate dollars to create a laboratory facility at the former Homestake Mine in Lead.

Today we are presented with another important issue that requires our attention. It's not new. The dilemma presented by flood waters covering private land has been with us for decades.

Nonmeandered waters started to become an issue in the 1990s, when eastern South Dakota received far more moisture than usual. Excessive rainfall created new lakes out of areas that once were farmland, pastures, small sloughs or other watersheds. Some nonmeandered waters, such as Cottonwood Lake in Spink County, became well-developed with several boat ramps and over 100 homes and cabins surrounding it; other non-meandered bodies may only be a couple of acres and a few feet deep.

Unfortunately, our state laws surrounding nonmeandered waters have been ambiguous. While the public has a right to use the water, private landowners also have a right to control their property. Several legislative efforts have tried to address this challenge, but the many competing opinions and interests made compromise elusive.

Ambiguous laws lead to litigation, and the courts have tried to resolve these ambiguities. But in South Dakota, our courts still understand that it's not their job to make new law – it's their job to ensure the laws as they exist are properly and fairly enforced.

The South Dakota Supreme Court made that abundantly clear in their *Duerre v. Hepler* decision this past March. In that decision the Court stated, "it is ultimately up to the Legislature to decide how these waters are to be beneficially used in the public interest."

Now is the time to make that decision.

To some of you, this is an issue of great importance, as it directly impacts you and your constituents. Others, I know, are not as clearly impacted. If you are among those who have not experienced the problem for yourself, know that this is a very big deal for many of your colleagues, particularly those from the northeastern part of our state.

These lakes there are an economic engine in South Dakota. Closures in some areas feel like the loss of the Sturgis Motorcycle Rally to the Black Hills, or loss of the Empire Mall in Sioux Falls. As fewer people visit these lakes to fish and boat, local economies feel the effects. Small town convenience stores, marinas, cafes, and hotels have suffered.

The urgency of addressing this problem does not mean that a solution was rushed, however. Quite the opposite. I'm not sure an interim legislative committee has ever committed more effort and attention to an issue within a six-week period.

In that time, your interim committee toured areas that had been affected. They went to Day County, Brown County, and the communities of Bristol, Webster, and Waubay. They saw firsthand the inundated areas and discussed how nonmeandered waters are impacting local residents. The committee held four public meetings and engaged many, many stakeholders.

They met with affected land owners, sportsmen, and business owners. Individual committee members even held even more public meetings to collect additional input. Through all the hearings, the committee heard testimony from more than 70 individuals, considered ten different bill drafts, and adopted a number of amendments.

Through that process, your committee drafted a compromise bill that balances the rights of landowners with the ability of sportsmen to use public waters for recreation. I applaud the efforts of the summer study committee and I support the bill.

The Open Waters Compromise will open tens of thousands of acres of nonmeandered waters to public recreation, while respecting the property rights of landowners.

It took much work, and a great deal of compromise, but this is, a good policy.

Now I've seen the forecast for today and the projected high, and I don't think it's going to get any cooler in here or in the Senate. I also saw that it's predicted to be 84 degrees in Webster, 85 in Hayti, and 88 in Redfield. So do yourselves and the folks of Clark, Hamlin, and Spink counties a favor by passing this bill in timely fashion. It's the 12th of June, and I think we'd all rather be at Cottonwood Lake right now.

Seriously though, now is the time to act. This bill has an emergency clause, so of course it will require a two-thirds majority, because for those who are affected, it is an emergency. You could pass it with just a majority vote, but then we would have to wait 90 days to reopen the lakes, and that doesn't make sense for anyone. If you pass this hard won compromise, I will sign it yet today.

It is within your power to make history by adding the Open Waters Compromise to the list of South Dakota's special session accomplishments. Let it be said that we came together – landowners and sportsmen, town and country, East River and West River, Republicans and Democrats – to *finally, finally,* solve this problem.

Thank you.